SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1946

No. 1048

C. W. THOMAS,

Petitioner,

vs.

STATE OF FLORIDA

PETITION FOR WRIT OF CERTIORARI

To the Honorable Fred M. Vinson, Chief Justice of the Supreme Court of the United States, and the Associate Justices Thereof:

Summary Statement of the Matter Involved

Your Petitioner, C. W. Thomas, respectfully represents that on the 18th day of January, 1946, an information for lottery was filed by the State Attorney for the Eighth Judicial Circuit of the State of Florida, in and for Alachua County, Florida, charging him in three counts with violation of certain of the lottery laws of the State of Florida.

Thereafter on the 22nd day of January, 1946, Petitioner was arraigned and entered his plea of not guilty to said charge. The case was set for trial February 7th, 1946.

Thereafter, Petitioner filed a Motion for Bill of Particulars on January 21st, 1946. Said motion was allowed in part and denied in part by Order of the Trial Judge entered January 21st, 1946. Whereupon, Petitioner not receiving all the information he deemed necessary, filed an amendment to Motion for Bill of Particulars on January 22nd, 1946; which motion was denied by order of the Trial Judge on January 27th, 1946. Petitioner then filed Motion to Quash on January 22nd, 1946, which motion was denied on January 22nd, 1946.

Thereafter, the case was called for trial on February 7th, 1946, as previously set, and resulted in a verdict of guilty as charged in the information. Petitioner, thereafter, filed Motion for New Trial and included in said grounds were the following:

> "11. That the Honorable Trial Court erred in allowing over the objection of the defendant the alleged bolita tickets in evidence.
>
> "16. That the Honorable Trial Court erred in its refusal to take away from the jury the second and third counts of the information in that, to-wit: before the jury could have found the defendant guilty of said second count, that they must have found that he was in possession of the property and that he had either personally waived his constitutional rights to a legal search, or that there has been a search warrant, and there was no evidence of either.
>
> "20. The Court erred in not permitting cross examination of the witness, Police Chief W. D. Joiner, relative to his interest in said cause, that is that the said Chief of Police investigated all of the prosecutions, threatened and intimidated the witnesses with the counsel, aid and assistance of T. E. Duncan, State's Attorney, and all for the sole purpose of preventing the Defendant from building a hotel in the City of Gainesville, Florida, which hotel would have been in

competition with the uncle and father of the Chief of Police.

"22. That the Court erred by refusing of its own motion to strike from the evidence, the testimony of the witness, Jake Brown, and the testimony of the witness, Irving Lawrence, after it appeared from the evidence from the testimony of both the State Attorney, T. E. Duncan, and said witness that the sole predicate and basis for the giving of said testimony of said witnesses was the intimidation and threats by the State Attorney, Deputy Sheriff, M. R. McGilvray, and Chief of Police W. D. Joiner, especially after it was clearly shown that one white man and one negro woman had been placed in jail when they refused to give testimony in line with the demands of the State Attorney, but insisted on telling the truth, when the said State Attorney demanded that they testify against the defendant, regardless of the truth of said statement.

"29. That the Court erred in permitting the State Attorney to abuse his oath of office, and his position as an officer of this said Court in intimidating, threatening, coercing the witnesses in said cause, and doing and performing acts which were in truth and in fact subornation of perjury."

The Trial Court on February 21st, 1946, entered an order denying said motion for new trial and on February 28th, 1946, adjudged Petitioner to be guilty and imposed final judgment and sentence of the law upon Petitioner in the following words and figures:

"Comes again, the defendant, C. W. Thomas who was tried by a jury of six good and lawful men on the 8th day of February, A. D. 1946, and found guilty, being now in open court in his own and proper person attended by his counsel of record, S. L. Scruggs and Parks M. Carmichael,

"Thereupon, the Court asked the defendant, C. W. Thomas if he had anything to say why the sentence of

the law should not be passed upon him, saying nothing sufficient, the Court adjudges you guilty.

"Whereupon, it is the judgment of the Court and the sentence of the law, that you, C. W. Thomas for the crime for which you have been and stand convicted, be delivered by the Sheriff of Alachua County, Florida, to the proper officer of the State Prison of Florida, there to be confined at hard labor for the full term and period of three (3) years, from the date of your delivery to the officer thereof.

"This February 28th, 1946.

/s/ JOHN A. H. MURPHREE."

Thereafter, Petitioner appealed to the Supreme Court of Florida, the highest Appellate Court of said State to have reviewed said trial, proceedings, sentence and final judgment, and in his assignment of errors, specifically complained among others of the ruling of the Trial Judge in allowing in evidence against him the alleged bolita tickets in violation of Petitioner's rights under the 4th and 5th and 14th Amendments to the Constitution of the United States and of Sections 12 and 22 of the Bill of Rights of the Florida Constitution. Petitioner also complained of a denial of due process of law as guaranteed him by the 14th Amendment to the Constitution of the United States in that evidence showed witnesses to have been intimidated and threatened prior to their testifying.

Thereafter, on November 22nd, 1946, the Supreme Court of Florida rendered its opinion and final judgment, affirming the judgment and sentence of the lower court; thereafter, Petitioner duly filed Petition for Rehearing, which said Supreme Court did on December 20th, 1946, enter its order denying.

Petitioner has exhausted all remedies available to him under the laws of the State of Florida.

Thereafter, Petitioner on the 23rd day of December, 1946, filed in the Supreme Court of Florida his Petition for Order staying the execution and enforcement of said judgment so that he might make this application to this Honorable Court for a Writ of Certiorari and the said Supreme Court of Florida, did on December 23rd, 1946, enter its order granting Petitioner's application for a stay of the execution and enforcement of said judgment for a period of sixty (60) days from said date, so that this application might be made.

Jurisdictional Statement

The final decision and judgment of the Supreme Court of Florida was entered on the date hereinabove given and the jurisdiction of this Court is invoked under Section 237 (b) (R. S. sec. 690, 709; Mar. 3, 1911, c. 231, sec. 236, 237, 36 Stat. 1156; Dec. 23, 1914, c. 2, 38 Stat. 790; Sept. 6, 1916, c. 448, sec. 2, 39 Stat. 726; Feb. 17, 1922, c. 54, 42 Stat. 366; Feb. 13, 1925, c. 229, sec. 1, 43 Stat. 937).

This Petitioner asserts and claims that rights, privileges and immunities secured and guaranteed to him under the Constitution of the State of Florida, as well as the Constitution of the United States, have been and were denied to him through the arbitrary action of the Trial Judge in allowing in evidence against him alleged bolita tickets unlawfully and illegally obtained by the State of Florida, and through the testimony of witnesses secured by the use of threats and intimidation of the State Attorney and a Deputy Sheriff or the Chief of Police of Gainesville, Florida.

Questions Presented and Reason Relied On for Allowance of Writ

The arbitrary admission in evidence against the Petitioner of alleged bolita tickets deprived Petitioner of his right guaranteed under the 5th Amendment to the Consti-

tution of the United States against self-crimination, as well as the right to due process and a fair and impartial trial as guaranteed by the Bill of Rights, Sections 12 and 22 of the Constitution of the State of Florida.

This question involves the admission into evidence of alleged bolita tickets secured for the State of Florida by an unlawful search and seizure of Petitioner's premises without a search warrant authorizing such a search and seizure. By allowing such evidence to go to the jury, the Trial Court denied to this Petitioner a fundamental right secured to him by the State and Federal Constitutions, and established through a long line of eminently respectable decisions and authorities both State and Federal.

The next question involves the denial to this Petitioner of due process of law as guaranteed by the 14th Amendment to the Constitution of the United States in that certain witnesses who were used as witnesses against Petitioner, and certain other witnesses who were not used against Petitioner, were abused, intimidated and threatened to the extent of placing two of them in jail, and advising others that they would thereafter eat their meals in jail. The evidence so obtained was used in the conviction of this Petitioner.

As a direct result of the abrogation of Petitioner's constitutional rights as above set out, this Petitioner did not receive a trial by a fair and impartial jury *upon legal evidence* nor *upon evidence legally obtained.*

Therefore, under the conditions above set out, the Trial Court lost jurisdiction over this cause, as well as this Petitioner, and was without power or authority to impose judgment or sentence upon Petitioner. So that unless this Honorable Court grants a Writ of Certiorari as sought herein, the arbitrary action of the State Courts will be made effective and this Petitioner will be unlawfully and

illegally deprived of his liberty in a proceeding which disregarded not only his rights secured by the State and Federal Constitutions, but also where long established procedural rights were ignored and disregarded.

Prayer

WHEREFORE, your Petitioner prays that Writ of Certiorari issued under the seal of this Court, directed to the Supreme Court of Florida, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the said Supreme Court, had in the case of C. W. Thomas, Appellant, *v.* State of Florida, Appellee, to the end that this cause may be reviewed and determined by this Court as provided for by the Statutes of the United States, and that judgment herein of said Supreme Court be reversed by this Court, and for such further relief as to this Court may seem proper.

Dated this 10 day of February, 1947.

ZACHARIAH HICKLIN DOUGLAS,
Counsel for Petitioner
of Gainesville, Florida.

INDEX TO BRIEF

	Page
Jurisdiction	11
Statement of case	11

INDEX TO AUTHORITIES CITED

Angello v. *United States*, 269 U. S. 20, Sup. Ct. 4, 70 L. Ed. 145	16
Carrol v. *United States*, 276 U. S. 132	15
Gildre v. *State*, 113 So. 704, 94 Fla. 134	14, 16
Go-Bart Importing Co. v. *United States*, 282 U. S. 344	14
Gould v. *United States*, 255 U. S. 298	14
Haile v. *Gardner*, 91 So. 376, 82 Fla. 355	14
Hart v. *State*, 89 Fla. 202, 103 So. 633	16
International Union of Mine, Mill & Smelter Workers v. *Tennessee Copper Co.*, D. C. Tenn. 1940, 31 Fed. Supp. 1015	20
Picking v. *Pennsylvania Railway Company*, C. C. A. Pa. 1945, 151 F. (2d) 240	19
Reeve v. *Howe*, D. C. Pa. 1940, 33 Fed. Supp. 619	16
Robertson v. *State*, 114 So. 534, 94 Fla. 869	14
Thurman v. *State*, 156 So. 484, 116 Fla. 426	14
United States v. *Southerland*, D. C. Ga. 1940, 37 Fed. Supp. 344	21
Constitution of Florida:	
Declaration of Rights, Section 12	11, 15, 16, 17
Declaration of Rights, Section 22	11, 15, 17
Constitution of United States:	
IV Amendment	18
V Amendment	11, 16, 18
XIV Amendment	11, 17, 18, 19, 27
Criminal Code of United States, Section 135, U. S. C. A. Tit. 18, S. 241	18, 19
Judicial Code of United States, Section 237(b)	11

Statutes Cited:

	Page
Florida Statutes, 1941, Section 562.03	13
Florida Statutes, 1941, Section 933.19	15
R. S. Section 1979, U. S. C. A. Tit. 8, S. 43	18

Text:

56 C. J. 1163-1165	14

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BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The opinion of the Supreme Court of Florida in this cause is reported in the Advance Sheet of Southern Reporter 28 So. Rep. 2d 267, under date of November 22nd, 1946. Rehearing denied same citation, under date of December 20th, 1946.

Jurisdiction

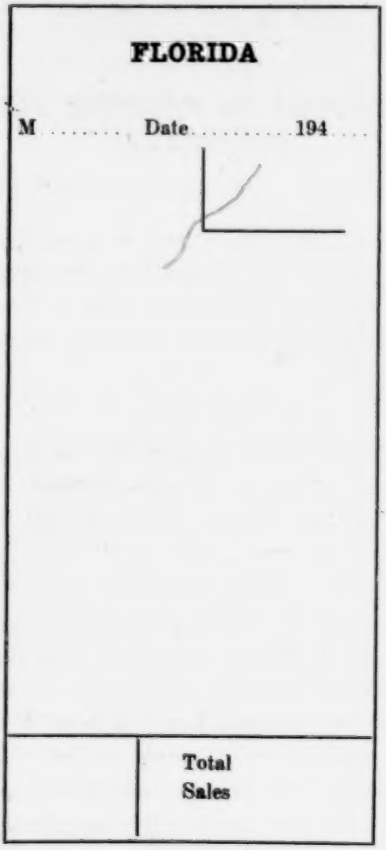
The jurisdiction of this Court is invoked under Section 237 (b) of the Judicial Code, as amended by the Act of February 13th, 1925, Chapter 229; 43 Stat. 937; 28 U. S. C. A. 344.

This case presents constitutional issues to-wit: the denial of rights privileges and immunities secured and guaranteed to the Petitioner by Sections 12 and 22 of the Declaration of Rights of the Constitution of Florida, as well as secured to the Petitioner by Articles V and XIV of the Amendments to the Constitution of the United States. The Petitioner was denied the right of due process of law and a fair and impartial trial and thereby denied the opportunity to pro-

tect and defend himself against the charge of the indictment. And the said ruling of the Trial Judge, allowing in evidence alleged bolita tickets illegally obtained, deprived the Petitioner of his right against self-crimination.

As the record before this Court, as hereinbefore recited shows, this case was on January 22nd, 1946, set for trial on February 7th, 1946.

During the course of the trial the State offered alleged bolita tickets in evidence (R. 42) as shown below, to-wit:



Over objection, properly and seasonably made, one ground of which was that the tickets were illegally obtained, the Trial Judge allowed the alleged tickets in evidence.

These alleged bolita tickets were taken by the State while searching the Petitioner's premises under authority of Florida Statute 562.03, which provides for search under a beer license only, and in the following words:

> "Licensees, by the acceptance of their license, agree[illegible] places of business during business hours shall at all times be subject to be inspected and searched without search warrant by the supervisors and also by sheriffs, deputy sheriffs and police officers. No beverage defined hereunder, except for the personal consumption of the vendor, his family and guests, shall be kept by a vendor in any building or room other than the building or room mentioned in his license; provided, however, that where a vendor requires an additional building or store room for the storing of a portion of his stock of such beverages he shall make application to the director for a permit to store such beverages in some other designated building or room. If such application shall be deemed reasonable by the Director he shall without any fee or other charge issue such permit and the vendor will thereby be permitted to keep such beverages in the place designated in said permit and such places may be inspected and searched at any time by any supervisor, sheriff, deputy sheriff or police officer. Such permit shall be issued in duplicate, one copy shall be posted in a conspicuous place in the place of business mentioned in the vendor's license, the other duplicate shall be posted on the outside of the entrance door to the building or room described in the permit."

There was no warrant for this search nor any arrest prior to or incident to the search of Petitioner's premises. The State Supervisor of Beverages conducted the search, having in attendance certain City and County officers.

While the State Beverage Supervisor was searching for alcoholic beverages under authority of the above mentioned statute, he found slips of paper alleged to be bolita tickets and seized them. Those are the same slips of paper that were offered by the State of Florida, and allowed in evidence by the trial judge contrary to the Federal and State Constitutions and amendments thereto.

The Florida decisions have consistently held in line with *Thurman* v. *State,* 156 So. 484, 116 Fla. 426:

> "Search of dwelling house, store, or other structure without warrant is prohibited by the State Constitution, Declaration of Rights, Section 22."

In *Gildre* v. *State,* 113 So. 704, 94 Fla. 134 the Court held:

> "This court has recently held that evidence procured under an invalid search warrant, when seasonably objected to, should not be admitted to prove guilt of one whose house has been unlawfully searched."
>
> "The same rule would also apply to evidence obtained by unlawful search conducted without a warrant." *Robertson* v. *State,* 114 So. 534, 94 — 869.

The Supreme Court of the U. S. held in *Gould* v. *U. S.,* 255 U. S. 298:

> "The admission in evidence against the accused in a criminal case, of evidence obtained by an illegal search of his premises and seizure of his private papers, controverts the guaranty of the 5th amendment to U. S. Constitution against self-crimination.

The Florida Supreme Court follows this authority in *Haile* v *Gardner,* 91 So. 376, 82 Fla. 355.

Further in *Go-Bart Importing Co.* v. *U. S.,* 282 U. S. 344, it was held that:

> "The protection of the 4th amendment against unreasonable search and seizure extended to a business office. (also 56 C. J. 1163-1165.)

> "Although the 4th amendment to the Federal Constitution operates only on actions of Federal Government and is not binding on the states, *our constitution contains the same provisions and the decisions of the Supreme Court of the U. S. are very persuasive in construing the meaning and scope of our own Constitution provision. Also our legislature has by statute adopted the opinion in Carol* v. *U. S. 276 U. S. 132 as the law of the state—1941 Fla. Statute 933.19.*

Under the light of the above cited authorities it is clearly apparent that the Florida Constitution and the Federal Constitution are in harmony on the matter of unlawful search and seizure and the fact that evidence so obtained is not admissible.

Section 12 of Declaration of Rights of the Constitution of Florida provides:

> "No person shall be subject to be twice put in jeopardy for the same offense, nor compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken without just compensation. The right of person to work shall not be denied or abridged on account of membership or non-membership of any labor union or labor organization; provided, that this clause shall not be construed to deny or abridge the right of employees by and through a labor organization or labor union to bargain collectively with their employer."

Section 22 of the Declaration of Rights of the Constitution of Florida provides:

> "The right of people to be secure in their persons, houses, papers and effects against unreasonable seizures and searches, shall not be violated and no warrants issued, but upon probable cause, supported by oath or affirmation, particularly describing the place or places to be searched and the person or persons and thing or things to be seized."

> "In a prosecution for breaking and entering and for receiving and concealing stolen goods, admitting over timely objection evidence obtained by searching dwelling, where neither warrant nor affidavit described objects to be seized, was reversible error."—*Gildrie* v. *State,* 94 Fla. 134, 113 So. 704.

In this case the court further held:

> "Section 12 of the Bill of Rights of the Constitution of the State of Florida is as follows: 'No person shall be subject to be twice put in jeopardy for the same offense, nor be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property without due process be taken without just compensation.' "

There is little difference between the wording of this provision of our State Constitution and the 5th Amendment to the Constitution of the United States, and as will be seen by referring to case of *Angello* v. *U. S.,* 269 U. S. 20, 46 S. Ct. 4, 70 L. ed. 145, and numerous cases there cited, the highest judicial authority holds that evidence obtained by the unlawful search of a dwelling house is not admissible to prove the occupant of such dwelling house guilty of a criminal offense upon the ground that the obtaining of such evidence is in conflict with the 5th Amendment to the Constitution of United States. It therefore follows that evidence so obtained in this state be excluded on proper objection being made, because to admit it is not only to violate the 5th Amendment of the Federal Constitution but also violates Section 12 of the Bill of Rights of the Constitution of Florida. See also *Hart* v. *State,* 89 Fla. 202, 103 So. 633.

In *Reeve* v. *Howe,* D. C. Pa. 1940, 33 F. Supp. 619, it was stated that:

> "The right to freedom from unreasonable search and seizure stands on parity with freedom of religion, speech, press and assembly, which are protected from

abridgment by Federal Government under First Amendment and by states under this clause. (Fourteenth Amendment, Sec. 1)

From these decisions there can be no doubt that reversible error has been committed by the Trial Court and by the Supreme Court of Florida, resulting in denial to the Petitioner of his constitutional rights. Under such conditions, if the highest court of our land approves this procedure, then our much vaunted right to a fair and impartial trial, due process, and equal protection of the law become meaningless.

Section 14 of the Federal Constitution protects the citizens of Florida in the enjoyment of the fundamental rights secured to them under Sections 12 and 22 of the Declaration of Rights of the State Constitution. It is unnecessary for us to argue and cite cases establishing that the right herein insisted upon—that is the right protecting against self-incrimination—is a fundamental right. It finds roots in the law of human rights and is included in the Bill of Rights of the Federal Constitution as well as the Bill of Rights of the State Constitution and is recognized as being of the same sacredness, along with the right that every person charged with crime shall be advised of the nature and cause of the accusations against him, and that every person charged with a crime shall have the benefit of counsel, and so forth. This Court, in long line of clear decisions, has consistently held their rights to be fundamental human rights, and that when a trial is had and it appears that a person has been deprived of such rights so secured, it nullifies the trial and strips the Court of jurisdiction to impose any legal judgment or sentence.

The Assistant State's Attorney made the statement (R. 17):

> "It is the purpose of the State to attempt to connect Mr. Thomas (Petitioner) with the ownership and of

> the possession of certain parts of that filling station and if the State is unable to do it, that is going to the matter of possession of lottery tickets and we ask the indulgence of the Court in putting on the State's case, until we can reach that part.

From the above stated theory of the State there can be no doubt of their attempt to show possession of the premises when the tickets were found to be in Petitioner. That the State was successful in so doing, is shown by the conviction of the Petitioner of possession of lottery tickets.

Petitioner also relies on a further ground to secure a reversal before this Honorable Court.

The State Attorney used threats and intimidation of witnesses to secure evidence against Petitioner. As a result, Petitioner was convicted upon evidence not legally obtained and therefore denied rights secured to him under the IV, V and XIV Amendments to the Constitution of the United States. The State Attorney abused his office by so doing.

The manner and methods used by the State Attorney to obtain testimony used in convicting this Petitioner bring this case within the purview of R. S. Section 1979, U. S. C. A. Title 8, Section 43 and Section 135 of the Criminal Code of the United States, U. S. C. A. Title 18, Section 241.

> "Every person who, under color of any statute, ordinance, regulation, custom or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the U. S. or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. R. S. Sec. 1979, U. S. C. A. Title 8, Section 43."

Under the decision as set forth in *Picking* v. *Pennsylvania Railway Co.*, CCA. Pa. 1945, 151 F. 2d 240, it has been established that:

> "Misuse of power, possessed by virtue of State law and made possible only because wrongdoer is clothed with authority of state law, is action taken under color of any statute, within this section making one who, acting under color of any statute, subjects any citizen to deprivation of any rights, privileges, or immunities secured by Federal Constitution and laws liable to party injured in action at law."
>
> "If a state statute purports to confer immunity upon an official of a state who has violated provisions of this section by depriving an individual of a federal right, the state has invaded the liberties of the individual which are protected by U. S. C. A. Constitutional Amendment XIV.

The *Picking* case further held:

> "This section must be deemed to include members of State judiciary acting in official capacity."

The Criminal Code, Section 135, Title 18, Section 241, U.S. C. A., as amended June 8, 1945, Chapter 178, Section 1, 59 Stat. 234, also has a provision designed to prevent the intimidation of witnesses, parties, jurors or officers. Its provisions are as follows:

> "Whoever corruptly, or by threats, force, or by any threatening letter or communication, shall endeavor to influence, intimidate, or impede any party or witness, in any court of the U. S. or before any U. S. Commissioner or officer acting as such Commissioner or any grand or petit juror, or officer in or of any court of the U. S., or officer who may be serving at any examination or other proceeding before any U. S. Commissioner or officer acting as such commissioner, or who shall injure any party or witness in his person or property on account of his attendance or having at-

tended such court or examination before such Commissioner or officer, or on account of his testifying or having testified to any matter pending therein, or who shall injure any such grand or petit juror in his person or property on account of any verdict, presentment, or indictment assented to by him, or on account of his being or having been such juror, or who shall injure any such Commissioner or officer in his person or property on account of the performance of his official duties, or who corruptly or by threats or force, by any threatening letter of communication, shall influence, obstruct, or impede, or endeavor to influence, obstruct, or impede, the due administration of justice therein, shall be fined not more than $5,000.00 or imprisoned not more than five years, or both."

The gravity of such an offense and the seriousness with which it is viewed is demonstrated by the fact that the penalty provisions have been increased by the 1945 amendment from a fine of $1,000.00 to a fine of $5,000.00 and length of imprisonment from 1 to 5 years.

The rights secured to Petitioner under Section 1 of the 14th Amendment to Constitution of the United States were clearly violated.

> "When a state officer acting under legal authority or under guise of such authority violates fundamental rights guaranteed to a citizen of the United States by this clause the amendment is violated, but if there is no authority to act for the state, the amendment is not violated."—*International Union of Mine, Mill and Smelter Workers* v. *Tennessee Copper Co.*, D. C. Tenn. 1940, 31 F. Supp. 1015.

Petitioner's position and right to relief under this amendment is further established by the following decision:

> "Acts of assault and torture by State officer in performance of his duties as such and for purpose of extorting a confession of crime constituted 'state

action' as distinguished from 'private action' within prohibition of civil rights statutes, since the action of a duly qualified officer acting within the scope of his authority constitutes 'state action' even though the particular acts complained of may not be authorized." *U. S.* v. *Sutherland,* D. C. Ga. 1940, 37 F. Supp. 344.

The following testimony shows the threats and intimidation practiced upon certain witnesses, used in securing the conviction of Petitioner.

Jake Brown, a negro, was sworn as a witness for the State. The following are excerpts from his testimony (R. 33):

"Q. Jake, you know Mr. T. E. Duncan, the State Attorney?

A. Yes, sir.

Q. Have you had occasion to go to his office to make statements to him?

A. Yes, sir.

Q. How many times?

A. Twice.

* * * * * * *

Q. State whether or not before you got to Mr. Duncan's office, Mr. McGilvray (deputy sheriff) told you and five others you were going to eat dinner in the county jail?

A. He told me that up here.

Q. State whether or not the first time you told him (State's Attorney) you were selling Cuba for yourself?

A. Yes, sir.

Q. After that, did you talk to Mr. Duncan again?

A. Yes, sir.

Q. State whether or not, before you told Mr. Duncan you were handling tickets for Mr. Thomas, Mr. Duncan told the sheriff to take you to jail?

A. Yes, Sir.

Q. State whether or not the sheriff got up when he told him that?

A. Yes, sir.

• • • • • • •

Q. When you told Mr. Duncan, when you made your statement, did you believe they would put you in jail if you didn't make that statement?

A. Yes, sir.

(R. 34)

Q. Was it based upon that belief that you made the statement? was it because of that?

A. I didn't want to go to jail.

Q. After they told you they were going to put you in jail, was that when you made the statement?

A. Afterwards.

• • • • • • •

(R. 35)

Q. State whether or not, before you made this statement to Mr. Duncan, he advised you, you would probably make 10 years?

A. If I didn't tell the truth.

• • • • • • •

Q. After that he told the sheriff to take you to jail?

A. No, sir.

Q. When was it?

A. Before that.

• • • • • • •

(R. 36-7)

Q. The Deputy Sheriff told you before you got there, you were going to eat dinner in the county jail?

A. After we went in there and talked.

Q. After you talked the first time?

A. Yes, sir.

Q. At the time you told him you were selling for yourself?

A. Yes, sir."

The Assistant State Attorney as much as admitted that intimidation was practiced upon this witness by the following question (R. 37):

"Q. Then Mr. Duncan and the Deputy Sheriff didn't frighten you into telling something that was not true?
A. No, sir."

The State Attorney asked this same witness the following questions (R. 39):

"Q. Did I attempt to punish you in any way?
A. You just told me if I didn't tell the truth you would put me in jail.
Q. When was that, the first time you came to me?
A. No, sir, the next time."

Again the State Attorney questioned this witness as follows (R. 41):

"Q. When you were before me the last time, Tuesday of this week, state whether or not I explained to you by your selling Bolita, you were just as guilty as the man you were selling it for?
A. Yes, sir.
Q. Did I tell you you could be prosecuted?
A. Yes, sir.
Q. If convicted you could be sent to the penitentiary?
A. Yes, Sir.
Q. Was it after that, you told me you were selling for Mr. Thomas?
A. Yes, sir."

The Assistant State Attorney then stated that this witness had been granted immunity (R. 42).

Another witness, D. D. Townsend was called as a Court witness. On cross examination (R. 66) he testified as follows:

"Q. You remember being called to the State Attorney's office?
A. That is right.

Q. State whether or not at that time when you were called into his office he made any threats or statements against you relative to prosecuting you if you did not make said statement.

A. Yes, he did. He said I would have to take the rap myself.

Q. Did he have you arrested?

A. Right at the time.

Q. And put you in jail?

A. That is right.

Q. Since then he dismissed the case?

A. That is right."

Mr. T. E. Duncan, State Attorney, was called by the Defendant.

The jury was taken out and the Defendant made the following motion (R. 79):

"Comes now the Defendant and proffers to prove by the State Attorney, Mr. Duncan, when he had the witness, D. D. Townsend, before him that he made the statement to D. D. Townsend, 'That is all, I was hoping you would see the light, but if you want to take the rap for someone else, that is your business. There was found in that room package after package of bolita tickets in your filling station. I am giving you the opportunity to say whose tickets those are. You don't know anything about the room which the beverage inspector searched that day, which you have designated #5?' to which the answer was 'no.'"

"And we want to further prove by Mr. Duncan that immediately thereafter the Defendant was taken from this conference and placed in jail at the instance and request of the State Attorney."

"Mr. Duncan: To which the State Attorney says that is correct. The State Attorney admits that occurred and permits it to be read in the presence of the jury. The State Attorney will further say that the witness D. D. Townsend was placed in jail and immedi-

ately a charge of possession of lottery tickets was made against him and said charge was quashed on a motion.

"The Court: The proffer is denied.

(R. 80)

"Mr. Scruggs: Mr. Duncan as State Attorney, state whether or not there appeared before you in the investigation of this cause Irving Lawrence, Jake Brown, Frances Holmes, Annie Belle Davis, Oren Anderson, Lula Cunningham, Susie Craig, W. D. Joiner, D. K. Higginbotham, Lillian Hill, Walter Balkman, Officer Tullis and Mr. M. R. McGilvray. State whether or not they appeared.

"To which last foregoing question counsel for the State objects, upon the ground it is irrelevant and immaterial and does not tend to prove any of the issues in this case.

"The objection is sustained.

"Q. Mr. Duncan state whether or not Frances Holmes, one of the witnesses who did appear before you was thereafter placed in jail.

"To which last foregoing question counsel for the State objects, upon the ground it is irrelevant and immaterial and does not tend to prove any of the isues of the case.

"Objection sustained."

Another witness for the Defendant, Frances Holmes, was called and the following testimony given (R. 96):

"Q. Were you ordered to appear before Mr. Duncan in an investigation of a case against Mr. C. W. Thomas, this week?

A. Wednesday.

Q. State whether or not in that investigation he questioned you? Asked questions of you?

To which last foregoing question counsel for the State objects upon the ground the question is immaterial.

(R. 97)

"The objection is sustained.

"Q. State whether or not after he talked with you, you were put in jail?

To which last foregoing question counsel for the State objects, upon grounds it is immaterial.

"The Court: The objection is sustained. What is the relevancy of that?

"Mr. Scruggs: The relevancy is to reach to the fact that all of the witnesses, together with needless others called by the State Attorney have been intimidated into making statements.

"Mr. Duncan: I ask the Court to strike the statement from the consideration of this jury and ask that counsel be reprimanded.

"The Court: The statement of counsel, gentlemen of the Jury, is no evidence and the Court does consider that it is highly improper.

"Mr. Scruggs: The Court asked me what it was for. The Defendant now offers as witnesses Levi Henry, Frances Holmes, Annie Belle Davis, Lorena Anderson, Lillie Mae Cunningham, Florence Niblack, Lillian Hill, Emma Kurz, and Walter Balkman, being witnesses called by the State and prof-ers to prove by the witnesses the same facts in line with the questions asked this witness.

"The Court: The proffer is denied."

From the above quoted testimony it is clear that this Petitioner was convicted upon evidence that was not legally obtained. He, therefore, was not convicted upon legal evidence.

There can be no question of the violation of the witness' civil rights. The direct effect of this deprivation of fundamental civil rights was the conviction of this Petitioner. His constitutional rights were violated and held for naught just as surely as if he had been coerced, threatened and intimidated himself.

Threats and intimidation were used by the State in the preparation of its case. The record affirmatively shows some of the tactics practiced by the State's Attorney, and the systematic exclusion of further testimony along this line by the Trial Judge. Enough is presented to demonstrate to this Honorable Court that organic and basic civil rights were grossly abused resulting in denial to Petitioner of the protection of the 14th Amendment to the Constitution of the United States. His conviction resulted directly therefrom.

We cannot conceive of a more abhor-ent disregard and destruction of fundamental rights secured by the organic law than perpetrated in this case through the action of the State in unlawfully seizing the alleged bolita tickets in the first instance and then threatening and intimidating witnesses to secure testimony and bring about Petitioner's conviction.

We feel that if the Court will carefully review the record in this proceeding, that the foregoing is a fair analysis of what appears to be the basis upon which Petitioner's conviction rests, and this Court will be forced to the inevitable conclusion that it should not be permitted to stand as a basis to deprive Petitioner of his liberty for a period of three years, and as a precedent to destroy and deny fundamental civil rights to Defendants in future cases in the State Courts of Florida.

It is therefore respectfully submitted that this case is one for the exercise by this Court of its supervisory powers, by granting a writ of certiorari and thereafter reviewing and reversing said decision of the Supreme Court of Florida.

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